



COM/DH7/fzs 4/19/2022

**FILED**

04/19/22

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

PM

A2112007

Application of Pacific Gas and Electric Company in the 2021 Nuclear Decommissioning Cost Triennial Proceeding (U39E).

Application 21-12-007

### **ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING**

This scoping memo and ruling sets forth the category, issues to be addressed, and schedule of the proceeding pursuant to Public Utilities (Pub. Util.) Code § 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure (Rules).

#### **1. Background**

On December 14, 2021, Pacific Gas and Electric Company (PG&E or Applicant) filed Application (A.) 21-12-007 for Commission review of its updated nuclear decommissioning cost studies and ratepayer contributions analyses in support of requests to fully fund the nuclear decommissioning master trusts to the level needed to decommission PG&E's two nuclear plants, the Diablo Canyon Power Plant (DCPP) and the Humboldt Bay Power Plant Unit 3 (HBPP) and for Commission review of decommissioning projects completed since the last Nuclear Decommissioning Cost Triennial Proceeding (NDCTP). PG&E requests the following in its application:

1. Commission review and approval of PG&E's revisions to the 2018 DCPP decommissioning cost estimate (DCE), including updates to assumptions, cost estimate and schedule associated with DCPP decommissioning consistent with

PG&E's obligations under the terms of the settlement agreement approved by the Commission in the 2018 NDCTP Application (2018 NDCTP Settlement)<sup>1</sup>;

2. Commission review and approval of PG&E's DCE for remaining decommissioning activities at the Humboldt Bay site, including Spent Fuel Management at the Humboldt Bay Independent Spent Fuel Storage Installation (ISFSI) and the costs incurred for HBPP decommissioning work completed since PG&E filed its previous 2018 NDCTP application.

On January 13, 2022, in Resolution ALJ 176-3500, the Commission preliminarily categorized this proceeding as ratesetting. The Utility Reform Network (TURN), Women's Energy Matters, and the Commission's Public Advocates Office all filed timely protests, and the Alliance for Nuclear Responsibility (A4NR), the Northern Chumash Tribal Council (NCTC), and the County of San Luis Obispo (County) all filed timely responses to the Application. On January 24, 2022, PG&E filed its Reply to Protests and Responses.

On February 3, 2022, the Administrative Law Judge (ALJ) issued a ruling setting a telephonic prehearing conference (PHC) for February 17, 2022.

On February 17, 2022, the Commission held a telephonic PHC.

Upon my review of the Application, protests, responses, and discussion at the PHC, I determine the issues and initial schedule of the proceeding to be as set forth in this scoping memo.

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<sup>1</sup> See D.21-09-003, issued September 10, 2021, approved the Settlement Agreement, dated January 10, 2020, between The Utility Reform Network, the Public Advocate's Office, Alliance for Nuclear Responsibility, County of San Luis Obispo, Women's Energy Matters, , yak tit'u tit'u yak tilhini Northern Chumash Cultural Preservation Kinship, and Pacific Gas and Electric Company.

## **2. Issues**

At the PHC, the Commission heard from parties on issues that were contested or lacking in consensus to be appropriately included within the scope of this proceeding. These issues are addressed below.

The County of San Luis Obispo expressed concerns about the discrepancies between the materials presented in PG&E's decommissioning cost estimate and materials submitted to the county pursuant to the California Environmental Quality Act (CEQA). No party disputes that the reasonableness of PG&E's decommissioning cost estimate is an issue in the scope of this proceeding, which necessarily includes whether PG&E accurately represented the decommissioning project and underlying cost estimate. While PG&E clarifies that the material it submitted to the County accurately represents the decommissioning project and that any inconsistency in the narrative description does not require revision to the cost estimate, it also committed to file an update or errata to its materials to reflect any necessary corrections, which may resolve the immediate concerns raised by the County. This issue will remain in scope pending a review of the additional information to be submitted by PG&E, and may be revisited should further inconsistencies be noticed through the course of this proceeding.

At the PHC, A4NR argued that the consideration of tsunami risk to the Humboldt Bay Independent Spent Fuel Storage Installation (HB ISFSI) falls under item 2a listed below. PG&E responded by stating that should A4NR submit intervenor testimony on the issue as A4NR perceives it to fall under item 2a, it reserves the right to submit rebuttal testimony on the issue accordingly. Therefore, we clarify that the issue of tsunami risk to the HB ISFSI

will be considered as part of this proceeding if, and to the extent, it is presented within A4NR's intervenor testimony as part of item 2a.

PG&E and the NCTC disagree as to whether this proceeding should consider the evaluation and submittal of proposals for future use of DCPD Lands and Facilities. While PG&E argues this issue is premature to be considered in the NDCTP, since PG&E must demonstrate compliance with Commission Resolution E-5076 when the Pub. Util. Code § 851 applications are filed seeking approval of the sale and disposition of DCPD Lands,<sup>2</sup> the NCTC highlights that PG&E's direct testimony in this proceeding includes a proposed land disposition strategy, and raises concerns that this proceeding could preemptively determine matters related to the filing of SCE's Pub. Util. Code § 851 application.

Given that PG&E has included a land disposition strategy as part of its application and opening testimony, the Commission may wish to further consider how or whether approval of a land disposition strategy may implicate any future Section 851 applications. Therefore, we will include the narrow issue of whether the Commission should consider PG&E's land disposition strategy in this proceeding, including whether the policy as written allows for proper future application of the Tribal Land Transfer Policy that is the subject of Rulemaking (R) 22-02-002.

The issues to be determined are:

1. Whether PG&E's decommissioning cost estimates (including underlying assumptions, associated trust contributions analyses, and forecasted escalation rates) for Diablo Canyon Power Plant are reasonable and in accordance with Sections 8321 through 8330 of the California Pub. Util. Code;

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<sup>2</sup> PG&E Reply at 4.

- a. Whether PG&E's revenue requirements are reasonable given the decommissioning cost estimate, updated trust fund balances, proposed asset allocation glidepath, and updated trust fund return forecasts;
  - b. Whether PG&E's repurposing assumptions for facilities and infrastructure at DCPD are reasonable;
  - c. Whether PG&E's management of spent nuclear fuel, including assumptions about how long spent nuclear fuel will remain at DCPD, is reasonable;
  - d. Whether PG&E reasonably considered options for reducing the volume of clean (non-radioactive) decommissioning wastes that must be disposed offsite, the economic methods for transporting such wastes, and the savings resulting from transporting such materials to in-state landfills;
  - e. Whether the DCPD Decommissioning Engagement Panel is reasonably funded and effective;
  - f. Whether the Commission should authorize PG&E's proposed revisions to the DCPD Milestone Framework;
  - g. Whether PG&E's contracting strategy for decommissioning DCPD is reasonable;
  - h. Whether PG&E's deferring of the identification of an applicable radiological release criteria for the DCPD Part 50 licenses will result in an increase in future costs;
  - i. Whether PG&E's decommissioning plan for DCPD adequately addresses the needs and concerns of the plant's host community, including concerns about the continuance of a water desalinization plant, and funding for county emergency services and warning sirens.
2. Whether PG&E's decommissioning cost estimates (including underlying assumptions, associated trust contributions analyses, and forecasted escalation

- rates) for HBPP are reasonable and in accordance with Sections 8321 through 8330 of the California Pub. Util. Code;
- a. Whether PG&E's revenue requirements are reasonable given the decommissioning cost estimate, updated trust fund balances, proposed asset allocation glidepath, and updated trust fund return forecasts;
  - b. Whether variances in actual versus forecast safe storage (SAFSTOR) expenses for the period 2018 through 2019 are reasonable;
  - c. Whether PG&E's activities and associated costs for completed projects with respect to HBPP decommissioning are reasonable (including those for non-radiological habitat restoration);
  - d. Whether PG&E's costs for retaining and utilizing qualified and experienced personnel to effectively, safely, and efficiently pursue physical decommissioning related activities at HBPP are reasonable.
3. Whether a spent fuel management cost estimate that assumes DOE reimbursement adequately reflects risk associated with DOE reimbursement post shutdown.
  4. Whether PG&E is meeting its obligations under the 2018 NDCTP Settlement;
    - a. Whether contributions to non-qualified nuclear decommissioning trusts will occur in a manner consistent with the 2018 NDCTP Settlement adopted in D.21-09-003 and permit a timely return to customers of unspent funds tied to specific scopes of work.
  5. Whether the Commission should consider PG&E's land disposition strategy for Diablo Canyon Power Plant.<sup>3</sup>

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<sup>3</sup> Consideration or approval of a land disposition strategy is not a waiver of any other requirements PG&E must meet when disposing of land, nor does the approval of a land

*Footnote continued on next page.*

### 3. Need for Evidentiary Hearing

Parties have indicated that evidentiary hearings will be needed. At this time, I find that hearings may be required, and have included such in the schedule set forth below.

### 4. Schedule

The following schedule is adopted here and may be modified by the assigned Commissioner or ALJ as required to promote the efficient and fair resolution of the Application:

Public Participation Hearings	TBD 2022
Intervenor Testimony	May 31, 2022
Rebuttal Testimony	June 30, 2022
Settlement Negotiations	July 2022
Parties to submit a settlement status update report	August 5, 2022
Evidentiary Hearings	September 2022
Opening Briefs	October 14, 2022
Reply Briefs	November 18, 2022

The proceeding will stand submitted upon the filing of reply briefs, unless the assigned Commissioner or ALJ requires further evidence or argument. The Commission intends to resolve the proceeding within eighteen months, pursuant to Public Utilities Code § 1701.5.

At the PHC, parties expressed interest in holding Public Participation Hearings. The Commission intends to hold a Public Participation Hearing and work with PG&E to coordinate arrangements for a facility site visit in

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disposition strategy render a judgment on the reasonableness of any project that would need to be considered as part of an application pursuant to Section 851.

San Luis Obispo for the DCCP. Parties are instructed to file comments no later than 10 days from the issuance of this ruling on whether the Commission should consider holding a Public Participation Hearing or conduct a site visit in Humboldt County for the HBPP.

## **5. Consolidation**

On February 28, 2022, Southern California Edison Company and San Diego Gas & Electric Company jointly filed Application 22-02-016, Application for the 2021 Nuclear Decommissioning Cost Triennial Proceeding. Pursuant to Rule 7.4 of the Commission's Rules of Practice and Procedure, proceedings involving related questions of law or fact may be consolidated. In the past, NDCTP applications filed by the IOUs have been consolidated. The parties to this proceeding are directed to submit comments by no later than 10 days from issuance of this ruling on whether this proceeding should be consolidated with A.22-02-016, the Joint Application of Southern California Edison and San Diego Gas & Electric Company for the 2021 Nuclear Decommissioning Cost Triennial Proceeding.

## **6. Settlement and the Alternative Dispute Resolution (ADR) Program**

The Commission's ADR program offers mediation, early neutral evaluation, and facilitation services, and uses ALJs who have been trained as neutrals. At the parties' request, the assigned ALJ can refer this proceeding to the Commission's ADR Coordinator. Additional ADR information is available on the Commission's website.<sup>4</sup>

Any settlements between parties, whether regarding all or some of the issues, shall comply with Article 12 of the Rules and shall be served in writing.

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<sup>4</sup> See D.07-05-062, Appendix A, Section IV.O.



Such settlements shall include a complete explanation of the settlement and a complete explanation of why it is reasonable in light of the whole record, consistent with the law and in the public interest. The proposing parties bear the burden of proof as to whether the settlement should be adopted by the Commission.

The Applicant is directed to meet and confer with the other parties and to file a Settlement Status Update on August 5, 2022. The contents of this update should include the following:

- A list identifying any and all material disputed issues of law that the parties have settled or otherwise stipulated for this proceeding. This must include relevant citations to the parties' prepared testimony, if any.
- A list identifying all remaining contested issues of law and/or facts.
- Any other relevant matters.

The purpose of settlement discussions and a settlement status update is to conserve parties' resources by streamlining the issues and reducing the number of contested issues to be resolved through evidentiary hearing.

## **7. Category of Proceeding/ *Ex Parte* Restrictions**

This ruling confirms the Commission's preliminary determination that this is a ratesetting proceeding. Accordingly, *ex parte* communications are restricted and must be reported pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

## **8. Public Outreach**

Pursuant to Pub. Util. Code § 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it

in the Commission's monthly newsletter that is served on communities and businesses that subscribe to it and posted on the Commission's website.

## **9. Intervenor Compensation**

Pursuant to Pub. Util. Code § 1804(a)(1), a customer who intends to seek an award of compensation must have filed and served a notice of intent to claim compensation by March 19, 2022, 30 days after the prehearing conference.

## **10. Response to Public Comments**

Parties may, but are not required to, respond to written comments received from the public. *See* Pub. Util. Code § 1701.1(g). Parties may do so by posting such response using the "Add Public Comment" button on the "Public Comment" tab of the docket card for the proceeding.

## **11. Public Advisor**

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 866-849-8390 or 415-703-2074 or 866-836-7825 (TTY), or send an e-mail to [public.advisor@cpuc.ca.gov](mailto:public.advisor@cpuc.ca.gov).

## **12. Filing, Service, and Service List**

The official service list has been created and is on the Commission's website. Parties should confirm that their information on the service list is correct and serve notice of any errors on the Commission's Process office, the service list, and the ALJ. Persons may become a party pursuant to Rule 1.4.

When serving any document, each party must ensure that it is using the current official service list on the Commission's website. Parties must also serve all testimony on the assigned Commissioner's office electronically by emailing the assigned Commissioner.

This proceeding will follow the electronic service protocol set forth in Rule 1.10. All parties to this proceeding shall serve documents and pleadings using electronic mail, whenever possible, transmitted no later than 5:00 p.m., on the date scheduled for service to occur.

In view of the COVID-19 pandemic and the various shelter in place orders, Commission's Rule of Practice and Procedure, Rule 1.10(e) requirement to serve paper copies of all e-filed documents to the ALJs is suspended for the duration of this proceeding. Therefore, when serving documents on the ALJ, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to the ALJ unless specifically instructed to do so.

Persons who are not parties but wish to receive electronic service of documents filed in the proceeding may contact the Process Office at [process\\_office@cpuc.ca.gov](mailto:process_office@cpuc.ca.gov) to request addition to the "Information Only" category of the official service list pursuant to Rule 1.9.(f).

### **13. Service of Documents on Commissioners and Their Personal Advisors**

Rule 1.10 requires only electronic service on any person on the official service list, other than the ALJ.

When serving documents on Commissioners or their personal advisors, whether they are on the official service list or not, parties must only provide electronic service. Parties must NOT send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so.

### **14. Assignment of Proceeding**

Darcie L. Houck is the assigned Commissioner and Amin Nojan is the assigned ALJ to the proceeding. Pursuant to Rule 13.2(b), ALJ Amin Nojan is the designated Presiding Officer.

**IT IS RULED** that:

1. The scope of this proceeding is described above.
2. The schedule of this proceeding is as set forth above.
3. Evidentiary hearings are needed.
4. Parties are directed to submit comments on whether the Commission should conduct a site visit and/or hold a Public Participation Hearing in Humboldt County for the HBPP within 10 days of issuance of this ruling.
5. Parties are directed to submit comments on whether this proceeding should be consolidated with Application 22-02-016, Joint Application of Southern California Edison Company and San Diego Gas & Electric Company for the 2021 Nuclear Decommissioning Cost Triennial Proceeding within 10 days of issuance of this ruling.
6. The presiding officer is Administrative Law Judge Amin Nojan.
7. The category of the proceeding is ratesetting.

This order is effective today.

Dated April 19, 2022, at Sacramento, California.

/s/ DARCIE L. HOUCK

Darcie L. Houck  
Assigned Commissioner